

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1317 of 2019

Arising Out of PS. Case No.-399 Year-2019 Thana- ARA NAWADA District- Bhojpur

=====

Dilip Kumar @ Santosh, male, aged about 49 years, Son of Bharat Mahto @ Bharat Singh @ Bharat Prasad, resident of Mohalla Pakri Police station- Ara Nawada in the District of Ara.

... .. Petitioner

Versus

1. The State of Bihar through Collector Cum District Magistrate, Bhojpur, Ara.
2. The Collector Cum District Magistrate, Bhojpur, Ara.
3. The Inspector of Police Ara Nawada, Police station, Ara.
4. The Assistant Sub Inspector of Police, Ara Nawada Police station, Ara.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. Gopal Prasad Roy-Advocate
For the Respondent/s : Mr. Iqbal Asif Niazi-AC to G.P.-5

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

17-09-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the F.I.R. of Ara Nawada P. S. Case No.399 of 2019, corresponding to Excise Case No.1047 of 2019 registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. Learned counsel for the petitioner submitted that Section 73(1) of the Bihar Prohibition and Excise Act, 2016 mandates that any Police Officer not below the rank of the Sub-Inspector may, without warrant enter, inspect, search any place at any time, day or night, and seize any document, sample, equipment,



conveyance, animal, commodity, intoxicant, material, raw material or any other item of concern, but the police officer, who conducted search and seizure in the instant case, is an Assistant Sub-Inspector of Police. He contended that since the search and seizure of the incriminating articles were made by an officer, who was not authorized in law. The continuation of the criminal prosecution itself would be bad in law. He has further contended that sub-Section-2 of Section-74 of the Bihar Prohibition and Excise Act, 2016 mandates that all arrests made under this section must be reported to the Collector forthwith, but in the instant case, even though one Prakash Prasad was apprehended on 07.06.2019, the date on which, the F.I.R. was instituted, no report in this regard was forwarded to the District Magistrate concerned. On the basis of the aforesaid submissions, he contended that the entire criminal prosecution is bad in law and the F.I.R., in question, is required to be quashed.

4. Per contra, learned counsel appearing for the State submitted that for the State of Bihar, there is complete prohibition of liquor intoxicant. Section 30(a) of the Bihar Prohibition and Excise Act, 2016 prescribes penalty for manufactures, possesses, buys, sells, distributes, collects, bottles, imports, exports, transports or removes any intoxicant or liquor within the territory of the State of Bihar. The allegation against the petitioner as mentioned in the F.I.R. is that on 07.06.2019, when the informant along with other Constables had proceeded for daily patrolling at 12.30 A.M., he received secret



information that the petitioner used to deal in liquor from his flour mill and a pulsar without number plate had reached there with the consignment of liquor upon which, after giving information to the superior police officers, he proceeded towards flour mill of the petitioner and saw a pulsar motorbike standing and two persons were chatting. On seeing the police party, they started to flee and upon which, one of them was caught hold, who disclosed his name as Prakash Prasad and on search of the flour mill of the petitioner, 36 litres of Indian made foreign liquor were recovered from a carton. He contended that the aforesaid allegations would clearly attract the ingredients of the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, accordingly, the F.I.R. has been registered and investigation has been taken up. As far as violation of the mandate of the provisions under Section 73(1)(e) and 74 of the Bihar Prohibition and Excise Act, 2016 is concerned, he has submitted that the same has in no manner prejudiced the case of the petitioner. He contended that any irregularity in search cannot vitiate the trial unless the accused has been prejudiced. He pleaded that even if the search was irregular, the seizure of the articles was not vitiated.

5. Having heard the learned counsel for the parties and perused the materials on record, I find substance in the submission of the learned counsel for the State.

6. The informant has stated in his written report that he had informed his superior police officers regarding confidential



information received by him that consignment of liquor was being delivered by a person, who had arrived on a motorbike at the flour mill of the petitioner. The raid conducted by the police resulted into seizure of incriminating articles. The F.I.R. of the case cannot be held to be bad merely because an Assistant Sub-Inspector of Police instead of Sub-Inspector of Police conducted the search and seizure.

7. In ***State of Maharashtra vs. Natwarlal Damodardas Soni***, ***AIR 1980 SC 593***, on which reliance was placed by the Division Bench in Jagdish Sah vs. State of Bihar (Cr. Misc. No.12313 of 2011), the Supreme Court observed:-
“.....Assuming that the search and seizure was illegal then also it will not affect either the validity of the seizure and further investigation by the authorities or the validity of trial which followed on the basis of illegal search and seizure.”

8. In ***State of Punjab vs. Wassan Singh and others***, ***(1981) 2 SCC 1***, the Supreme Court held that irregularity in search cannot vitiate the seizure of the articles.

9. In ***Radha Kishan vs. State of U.P.***, ***AIR 1963 SC 822***, the Supreme Court held that irregularity in a search would cast a duty upon the Court to scrutinize the evidence regarding the search very carefully.

10. In ***Shyam Lal Sharma and another vs. the State of M.P.***, ***AIR 1972 SC 886***, the Supreme Court held that even if the



search is illegal being contravention with the requirements of Section 165 Cr.P.C. that provision ceases to have any application to the subsequent steps in the investigation.

11. Regard being had to the facts and circumstances of the case, in view of the ratio laid down by the Supreme Court in the above noted cases, I see no merit in this application.

12. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.09.2019
Transmission Date	30.09.2019

